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To protect financial institutions from liability for damages caused by failure to remove asbestos from a residential or commercial building in which the financial institution holds a security interest if an accredited asbestos management planner has recommended in-place management of the asbestos, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 17, 1995

Mr. SCHUMER introduced the following bill; which was referred to the Committee on Banking and Financial Services and, in addition, to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To protect financial institutions from liability for damages caused by failure to remove asbestos from a residential or commercial building in which the financial institution holds a security interest if an accredited asbestos management planner has recommended in-place management of the asbestos, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Asbestos Management
3 Incentive Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) Although asbestos is hazardous, the risk of
7 asbestos-related disease depends upon exposure to
8 airborne asbestos fibers.

9 (2) Data available to the Environmental Protec-
10 tion Agency suggest that average airborne asbestos
11 levels in buildings are very low. Accordingly, the
12 health risk to most building occupants also appears
13 to be very low.

14 (3) The Environmental Protection Agency has
15 estimated that only 20 percent of all buildings (in-
16 cluding public and commercial buildings, residential
17 apartment buildings of 10 units or more, and Fed-
18 eral buildings) contain friable asbestos-containing
19 material.

20 (4) The Environmental Protection Agency has
21 found that removal of asbestos is often not the best
22 course of action to reduce asbestos exposure. In fact,
23 by releasing asbestos-containing material fibers into
24 the air, an improper or unnecessary removal can cre-
25 ate a dangerous situation where none previously ex-

1 isted and could result in a net increase in human ex-
2 posures and risks.

3 (5) The Environmental Protection Agency re-
4 quires asbestos removal only to prevent significant
5 public exposure to airborne asbestos fibers during
6 building demolition or renovation activities.

7 (6) Many lending institutions require the re-
8 moval of asbestos, regardless of its condition, from
9 commercial buildings before approving loans secured
10 by those buildings because of the potential liability
11 for the health of the occupants or property damages
12 for failure to remove the asbestos.

13 (7) The Environmental Protection Agency rec-
14 ommends a pro-active, in-place management pro-
15 gram whenever intact asbestos-containing material is
16 discovered.

17 (8) The American Medical Association's Council
18 on Scientific Affairs has stated that "it is better
19 that society use its limited financial resources in
20 learning how to live safely with [asbestos] than in
21 attempting to remove it totally from the environ-
22 ment."

23 (9) The September 1991 report of the Health
24 Effects Institute's Asbestos Literature Review Panel
25 stated that "there does not appear to be sufficient

1 risk to the health of general occupants to justify ar-
2 bitrarily removing intact asbestos-containing mate-
3 rial from well-maintained buildings”. The report also
4 acknowledged that “because custodial and mainte-
5 nance workers may be transiently exposed to higher
6 levels of asbestos, their added life-time risk of cancer
7 may be appreciably higher.”

8 **SEC. 3. EFFECT OF ASBESTOS INSPECTION ON LENDING IN-**
9 **STITUTIONS.**

10 (a) LIABILITY IMMUNITY.—A lending institution that
11 makes a loan or other extension of credit secured by a
12 mortgage or other lien on a commercial building shall not
13 be liable, from the time the loan or other extension of cred-
14 it is made until it is renegotiated or a superseding loan
15 or other extension of credit is made, under any Federal,
16 State, or local law to any person for injuries, costs, dam-
17 ages, expenses, loss, or other obligation (including claims
18 for indemnification or contribution and claims by third
19 parties for death, personal injury, illness or loss of or dam-
20 age to property or economic loss) which results from the
21 presence of asbestos-containing material in the building in
22 any case in which—

23 (1) the building was constructed during the 5-
24 year period ending on the date that the loan or other
25 extension of credit is made, and the building’s con-

1 construction manager certifies that the building con-
2 tains no asbestos-containing material; or

3 (2) the building—

4 (A) is one for which an asbestos inspection
5 was conducted in accordance with section 6
6 after January 1, 1989, and during the 5-year
7 period ending on the date that the loan or other
8 extension of credit is made (as demonstrated by
9 appropriate documentation);

10 (B) has not been significantly rebuilt or
11 renovated in the area that contains asbestos-
12 containing material since that inspection was
13 completed;

14 (C) is one in which that portion of asbes-
15 tos-containing material which the management
16 planner recommended for removal has been re-
17 moved in accordance with the Occupational
18 Safety and Health Act and the regulations pro-
19 mulgated pursuant to section 7(a); and

20 (D) is one in which an operations and
21 maintenance program is currently being con-
22 ducted in accordance with section 8 and the
23 regulations promulgated pursuant to section
24 7(a) for remaining asbestos-containing mate-

1 rials which the management planner rec-
2 ommended be handled in place.

3 (b) LIMITATION.—The immunity from liability pro-
4 vided in subsection (a) shall not apply if—

5 (1) the lending institution requires removal of
6 asbestos-containing material that the management
7 planner has recommended be handled in place; or

8 (2) the lending institution requires an asbestos
9 inspection of the building despite the fact that—

10 (A) the loan applicant demonstrates, with
11 appropriate documentation, that the conditions
12 in subsection (a)(1) or (a)(2) have been satis-
13 fied; or

14 (B) the loan applicant demonstrates, with
15 appropriate documentation, that all asbestos-
16 containing material has been removed from the
17 building.

18 (c) EXCLUSION.—The immunity from liability pro-
19 vided in subsection (a) shall not apply to a subsidiary of
20 a lending institution in any case in which the lending insti-
21 tution makes a loan or other extension of credit secured
22 by a mortgage or other lien on a commercial building, and
23 the subsidiary is the person to which the loan or other
24 extension of credit is made. For purposes of this sub-
25 section, the term “subsidiary” means any company that

1 is owned or controlled, directly or indirectly, by a lending
2 institution.

3 (d) EFFECTIVE DATE.—This section shall take effect
4 upon the promulgation of regulations by the Adminis-
5 trator of the Environmental Protection Agency pursuant
6 to section 7(a).

7 **SEC. 4. LIABILITY IN THE EVENT OF FORECLOSURE.**

8 In the case of a lending institution that is immune
9 from liability with respect to a commercial building under
10 section 3 and acquires title to such building through fore-
11 closure or other exercise of rights under a security inter-
12 est, the immunity from liability shall continue in effect so
13 long as the lending institution maintains the operations
14 and maintenance program for the building in accordance
15 with the regulations promulgated pursuant to section 7(a),
16 the Environmental Protection Agency asbestos guidance
17 documents, and this Act.

18 **SEC. 5. CONSTRUCTION OF ACT.**

19 The requirement by a lending institution that a loan
20 applicant conduct an asbestos inspection in accordance
21 with this Act of a building to be secured by a loan, and
22 the conducting of an operations and maintenance program
23 in the building after foreclosure or other exercise of rights
24 under a security interest, shall not be construed as partici-
25 pation in the management of the building by the lending

1 institution and shall be considered to be an activity carried
2 out by the lending institution solely to protect the institu-
3 tion's security interest.

4 **SEC. 6. ASBESTOS INSPECTION REQUIREMENTS.**

5 (a) IN GENERAL.—For purposes of this Act, an as-
6 bestos inspection of a commercial building, if the loan ap-
7 plicant chooses to obtain one, shall be conducted by a
8 qualified management planner for the purpose of deter-
9 mining whether asbestos-containing material is present in
10 the building. If an inspection reveals the presence of asbes-
11 tos-containing material, the management planner shall
12 recommend specific response actions for each individual
13 area of the building where such material is found. The
14 recommendations shall be made in accordance with the
15 regulations promulgated pursuant to section 7(a) and with
16 the Environmental Protection Agency asbestos guidance
17 documents.

18 (b) MANAGEMENT PLANNER QUALIFICATIONS.—For
19 purposes of this Act, a qualified management planner is
20 a person who meets all of the following requirements:

21 (1) The person must be accredited, pursuant to
22 title II of the Toxic Substances Control Act, as an
23 inspector and management planner for asbestos-con-
24 taining material in a public or commercial building.

16 (1) Paragraph (2) of subsection (a) is amended
17 by inserting before the comma the following: “or for
18 a public or commercial building”.

(2) Clause (ii) of subsection (a)(1)(A) is amended by inserting before the period the following: “or for public or commercial buildings”.

24 (a) ASBESTOS INSPECTION AND MANAGEMENT
25 STANDARDS FOR PUBLIC AND COMMERCIAL BUILD-

1 INGS.—Not later than 1 year after the date of the enact-
2 ment of this Act, the Administrator of the Environmental
3 Protection Agency shall promulgate regulations governing
4 the inspection and management of asbestos in public and
5 commercial buildings for purposes of this Act only. The
6 regulations shall include—

7 (1) detailed guidelines for management plan-
8 ners to determine whether asbestos-containing mate-
9 rial should be removed or managed in place in a
10 public or commercial building;

11 (2) appropriate practices for conducting oper-
12 ations and maintenance programs in public or com-
13 mercial buildings in which asbestos-containing mate-
14 rial is managed in place; and

15 (3) standards, applicable to persons complying
16 with section 8(1), for periodic surveillance of asbes-
17 tos-containing material that is managed in place in
18 commercial buildings, including standards for the
19 training of maintenance and custodial staff working
20 in such buildings that are equivalent to the stand-
21 ards for the training of maintenance and custodial
22 staff of local educational agencies under title II of
23 the Toxic Substances Control Act.

24 (b) REVISION OF ENVIRONMENTAL PROTECTION
25 AGENCY ASBESTOS GUIDANCE DOCUMENTS.—The Ad-

1 administrator of the Environmental Protection Agency shall
2 periodically update, revise, and republish the Environ-
3 mental Protection Agency asbestos guidance documents.

4 **SEC. 8. OPERATION AND MAINTENANCE REQUIREMENTS.**

5 For purposes of section 3(a)(2)(D), the following re-
6 quirements must be met after an asbestos inspection of
7 the building concerned is conducted:

8 (1) The owner or operator shall ensure that the
9 remaining asbestos-containing material is visually in-
10 spected, not less frequently than every 6 months, by
11 a member of the maintenance or custodial staff, or
12 another person, who has undergone training in ac-
13 cordance with the standards contained in the regula-
14 tions promulgated pursuant to section 7(a)(4).

15 (2) All remaining accessible asbestos-containing
16 material in public and maintenance areas of the
17 building, including asbestos in thermal system insu-
18 lation and spray-on and trowelled-on asbestos-con-
19 taining material but excluding intact vinyl floor tile
20 and ceiling tile in public areas, shall be prominently
21 labeled. The owner or operator shall ensure that ac-
22 cess to any remaining asbestos-containing material
23 located in inaccessible areas, such as in spaces be-
24 tween floors or walls of the building, is permitted

1 only to persons who have been notified of the pres-
2 ence of the asbestos-containing material.

3 (3) After the inspection referred to in section
4 3(a)(2)(A), a report on the inspection shall be kept
5 on file in the building. Such report shall include an
6 accounting of remaining asbestos-containing mate-
7 rial, any such material recommended for removal,
8 and any removal that has taken place since the pre-
9 vious inspection. Such report shall be available in
10 the building, in the administrative offices or other
11 appropriate place for inspection by tenants and em-
12 ployees in the building, maintenance workers of the
13 building, and building contractors. The inspection
14 report shall be updated after each subsequent in-
15 spection pursuant to paragraph (1) and after any
16 change in condition of asbestos-containing material
17 being managed in place.

18 (4) After each inspection pursuant to para-
19 graph (1), the owner of the building shall notify
20 maintenance workers of the building, either in writ-
21 ing or by posting notice, that an inspection has oc-
22 curred and that an inspection report is available for
23 inspection.

1 **SEC. 9. RELATIONSHIP TO OTHER LAW.**

2 (a) CLEAN AIR ACT.—Nothing in this Act shall be
3 construed or interpreted to preempt, supersede, or other-
4 wise affect any requirement to remove asbestos from a
5 building pursuant to section 112 of the Clean Air Act (42
6 U.S.C. 7412), as implemented through regulations known
7 as the national emission standards for hazardous air pol-
8 lutants (40 C.F.R. 61).

9 (b) LIMITED REQUIREMENTS.—Nothing in this Act
10 shall be construed or interpreted as a general requirement
11 for inspections or operations and maintenance programs
12 in public and commercial buildings. The requirements of
13 sections 6, 7, and 8 are established solely to enable lending
14 institutions to satisfy the conditions of this Act for pur-
15 poses of obtaining immunity from liability under section
16 3.

17 **SEC. 10. DEFINITIONS.**

18 For purposes of this Act, the following definitions
19 apply:

20 (1) The term “asbestos-containing material”
21 has the meaning given that term by section 202(4)
22 of the Toxic Substances Control Act (15 U.S.C.
23 2642(4)).

24 (2) The term “commercial building” means any
25 building that is not a publicly owned building and
26 that is not a school building as defined in section

1 202(13) of the Toxic Substances Control Act, except
2 that such term does not include any residential
3 building of fewer than 10 units that is not part of
4 a complex of other residential buildings under com-
5 mon ownership.

6 (3) The term “EPA asbestos guidance docu-
7 ments” means—

8 (A) the most current version of the publi-
9 cation of the Environmental Protection Agency
10 titled “Guidance for Controlling Asbestos-Con-
11 taining Materials in Buildings” (also known as
12 the “Purple Book”);

13 (B) the most current version of the publi-
14 cation of the Environmental Protection Agency
15 titled “Managing Asbestos in Place” (also
16 known as the “Green Book”); and

17 (C) any other publication of the Environ-
18 mental Protection Agency, including any guid-
19 ance documents published pursuant to section
20 7(a), published for the purpose of enabling
21 building owners to select and apply appropriate
22 asbestos control and abatement actions in their
23 buildings.

24 (4) The term “lending institution” means (A) a
25 bank, savings and loan association, credit union, or

1 similar institution insured by, or subject to the su-
2 pervision, approval, or regulation of, the Board of
3 Governors of the Federal Reserve System, the Fed-
4 eral Deposit Insurance Corporation, the Comptroller
5 of the Currency, the Office of Thrift Supervision, or
6 the National Credit Union Administration; (B) any
7 other person, including an insurance company, that
8 makes direct loans or other extensions of credit se-
9 cured by mortgages or other liens on commercial
10 buildings; (C) any Federal agency to the extent the
11 agency makes direct loans or other extensions of
12 credit secured by mortgages or other liens on com-
13 mercial buildings; and (D) the Federal Deposit In-
14 surance Corporation, the National Credit Union Ad-
15 ministrator Board, and the Resolution Trust Cor-
16 poration, in such corporation's or Board's capability
17 as conservator, receiver, or liquidating agency for
18 any insured depository institution (as that term is
19 defined in section 3 of the Federal Deposit Insur-
20 ance Act). The term does not include any institution
21 or Federal agency engaged primarily in the purchase
22 of mortgage loans.

23 (5) The term "mortgage" means a lien as is
24 commonly given to secure advances on, or the un-
25 paid purchase price of, a commercial building (and

1 related real estate) under the laws of the State in
2 which the building is located, together with the cred-
3 it instrument, if any, secured thereby. The term in-
4 cludes second mortgages and other subsequent liens
5 on a commercial building given to secure advances
6 or loans.

7 (6) The term “response action” has the mean-
8 ing given that term by section 202(11) of the Toxic
9 Substances Control Act (15 U.S.C. 2642(11)).

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